REMARKS

No claims are amended, no claims are canceled, and no claims are added; as a result, claims 1-40 are now pending in this application.

§102 Rejection of the Claims

Claims 1-6, 31-36, and 40 were rejected under 35 U.S.C. § 102(b) for anticipation by Trostle (U.S. 5,919,257). Applicants respectfully traverse the rejection of claims 1-6, 31-36, and 40.

Referring to claim 1, Applicants respectfully submit that the Final Office Action fails to meet its burden for establishing a *prima facie* case of anticipation[1] because Trostle fails to disclose the subject matter of the claim 1 of the present application.

Independent claim 1 requires the following:

> A method to detect fraudulent activities at a network-based transaction facility, the method comprising:
> causing a first identifier associated with a first user identity to be stored on a machine responsive to a first sales-related event with respect to the network-based transaction facility and initiated under the first user identity from the machine which is coupled to the network-based transaction facility via a network; and
> detecting a potentially fraudulent activity by detecting a lack of correspondence between the first identifier stored on the machine and a second identifier associated with a second user identity responsive to a second sales-related event with respect to the network-based transaction facility and initiated under the second user identity from the machine.

In reference to the claim 1, the Final Office Action highlights the following quote from Trostle[2]:

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[1] Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, anticipation requires the presence in a single prior reference disclosure of each an every element of the claimed invention, arranged as in the claim. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984).

[2] *See* Trostle at column 5, lines 49-67.

> In step 82 a username prompt is presented to the user. In response,
> the user enters a username which is transmitted to the server and in
> step 84 the server compares the entered username against a list of
> authorized users. If the username is not valid, network access is
> denied in step 86 and the login process ends. However, if the
> entered username is on the list, the server returns an encrypted
> private key to the workstation in step 88. The encrypted private
> key can only be decrypted with the user's password. In step 90 the
> server checks if any login restrictions, such as, time restriction,
> station restrictions and account lock-out restrictions have been
> violated. These restrictions prevent logins from unauthorized
> workstations or logins during the wrong time of day. If there are
> violations, access is denied. However, if there are no login
> restrictions, the user is prompted to enter a password in step 92 and
> the validity of the password is determined in step 94.

Trostle describes a logging in process. In computer security, logging in is a process
by which access to a computer system is controlled by identification of the user in order to obtain
credentials to permit access. In contrast, claim 1 requires detecting a potentially fraudulent
activity by detecting a lack of correspondence between identifiers that are stored in response to
sales-related events. In Trostle "[i]f the username is not valid, network access is denied in step
86 and the login process ends." Accordingly, Trostle fails to disclose the limitations of the claim
1. Specifically, the claim 1 limitations require "detecting a potentially fraudulent activity by
detecting a lack of correspondence between the first identifier stored on the machine and a
second identifier associated with a second user identity responsive to a second sales-related event
with respect to the network-based transaction facility and initiated under the second user identity
from the machine." Further, the claim 1 limitation requires "causing a first identifier to be stored
on a machine responsive to a first sales-related event with respect to the network-based
transaction facility. In contrast, Trostle fails to describe a "first sales-related event", much less a
first identifier to be stored on a machine responsive to the first sales-related event, as required by
the limitations of the claim 1.

Applicants respectfully submit that the Final Office Action fails to meet its burden for
establishing a *prima facie* case of anticipation[3].

Independent Claim 31 requires:

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[3] As required by *In re Dillon*

> causing a first identifier associated with a first user identity to be stored on a machine responsive to a first sales-related event with respect to the network-based transaction facility and initiated under the first user identity from the machine which is coupled to the network-based transaction facility via a network; and
>
> detecting a potentially fraudulent activity by detecting a lack of correspondence between the first identifier stored on the machine and a second identifier associated with a second user identity responsive to a second sales-related event with respect to the network-based transaction facility and initiated under the second user identity from the machine.

Independent claim 33 requires:

> an identifier processor to cause a first identifier associated with a first user identity to be stored on a machine responsive to a first sales-related event with respect to the network-based transaction facility and initiated under the first user identity from the machine which is coupled to the network-based transaction facility via a network; and
>
> a first detection processor to detect a potentially fraudulent activity by detecting a lack of correspondence between the first identifier stored on the machine and a second identifier associated with a second user identity responsive to a second sales-related event with respect to the network-based transaction facility and initiated under the second user identity from the machine.

Independent claim 40 requires:

> a first means for causing a fist identifier associated with a first user identity to be stored on a machine responsive to a first sales-related event with respect to the network-based transaction facility and initiated under the first user identity from the machine which is coupled to the network-based transaction facility via a network; and
>
> a second means for detecting a potentially fraudulent activity by detecting a lack of correspondence between the first identifier stored on the machine and a second identifier associated with a second user identity responsive to a second sales-related event with respect to the network-based transaction facility and initiated under the second user identity from the machine.

Applicants respectfully submit that the above remarks are also applicable to a consideration of the independent claims 31-33 and 40

Claims 2-6 depend on independent claim 1. Claims 34-36 depend on independent claim 33. As dependent claims are deemed to include all limitation of claims from which they depend, the rejection of claims 2-6 and 34-36 under 35 U.S.C. § 102 is also addressed by the above remarks

Because Claims 1-6, 31-36, and 40 are not anticipated by Trostle, Applicants respectfully request reconsideration and withdrawal of the rejection, and allowance of claims 1-6, 31-36, and 40.

§103 Rejection of the Claims

Claims 7-8 and 37

Claims 7-8 and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Trostle. Applicants respectfully traverse the rejection of claim 7-8 and 37.

The Final Office Action admits that Trostle does explicitly disclose limitations of the claims 7-8 and 37. Nevertheless, the Final Office Action maintains that the subject matter of the mentioned claims as inherent in Trostle. Specifically, the Final Office Action on Page 4 states:

> "[s]toring user identifiers on the machine within a cookie is a well-known cookie-bundling scheme. Cookie bundling is a common practice wherein all of the separate cookies pertaining to different type of user transaction preferences are packed together into one file."

Applicants respectfully traverse the single reference rejection under 35 U.S.C. § 103 since not all of the recited elements of the claims are found in Trostle. Since all the elements of the claim are not found in the reference, Applicants assume that the Final Office Action is taking official notice of the missing elements. Applicants respectfully traverse this official notice and request the Examiner to provide a reference that describes such an element. Absent a reference, it appears that the Examiner is using personal knowledge, so the Examiner is respectfully requested to submit an affidavit as required by 37 C.F.R. § 1.104(d)(2).

For at least the reasons stated above, the Final Office Action fails to meet its burden for establishing a *prima face* case of obviousness with respect to claims 7-8 and 37. Applicants respectfully request reconsideration and withdrawal of the rejection, and allowance of claims 7-8 and 37.

Claims 9-30 and 38-39.

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). To do that the Examiner must show that some objective teaching in the prior art or some knowledge generally available to one of ordinary skill in the art would lead an individual to combine the relevant teaching of the references[4]. *Id.*

Claims 9-19 and 38 were rejected under 35 U.S.C. 103(a) as being unpatentable over Trostle in view of Miller (Michael Miller, The complete Idiot's Guide to Ebay Online Auctions, copyright July 1999). Claims 20-30 and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Trostle in view of Miller as applied to claims 9-19 and 38 above and further in view of Smaha et al. (U.S. 5,557,742).

Referring to Claims 9-30 and 38-39, the Final Office Action contends that it would have been obvious to incorporate what is taught by Miller and/or Smaha into Trostle. Such contention assumes that Claims 8 and 37, of which Claims 9-30 and 38-39 are depended on, are unpatentable over Trostle and the Examiner's official notice as cited above. Applicants respectfully traversed this official notice above and requested the Examiner to provide a reference that describes such an element. Because the Office Action did not show anticipation or obviousness in view of Trostle of Claims 8 and 37 of which Claims 9-30 and 38-39 either

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[4] Obviousness is tested by "what the combined teaching of the references would have suggested to those of ordinary skill in the art." *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 878 (CCPA 1981)). But it "cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." *ACS Hosp. Sys.*, 732 F.2d at 1577, 221 USPQ at 933. And "teachings of references can be combined *only* if there is some suggestion or incentive to do so." *Id.* (emphasis in original).

directly or indirectly dependant of, Applicants respectfully submit that the incorporation of Miller and/or Smaha into Trostle would not be obvious.

Because the Final Office Action did not show that some objective teaching in the prior art or some knowledge generally available to one of ordinary skill in the art would lead an individual to combine the relevant teaching of the references, the Final Office Action did not carry the burden to establish a *prima facie* case of obviousness[5].

For at least the reasons stated above, the Final Office Action fails to meet its burden for establishing a *prima face* case of obviousness with respect to claims 9-30 and 38-39. Applicants respectfully request reconsideration and withdrawal of the rejection, and allowance of claims 9-30 and 38-39.

Reservation of Rights

In the interest of clarity and brevity, Applicants may not have addressed every assertion made in the Final Office Action. Applicants' silence regarding any such assertion does not constitute any admission or acquiescence. Applicants reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicants timely object to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserve all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

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[5] As required in *In re Fine*

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at 408-278-4042 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.
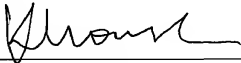
Respectfully submitted,

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Date 4 - 30 - 2007   By _____
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 30th, day of March, 2007.

_____Dawn R. Shaw_____   _____
Name   Signature